84-1595

No.84-_____

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CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT F. RIGGINS

Petitioner

v

THE INTERNAL REVENUE SERVICE, THE COMMISSIONER of the INTERNAL REVENUE SERVICE, L.A. REED, THERON C. POLIVKA, T. THROESCH, W.R. VIDMAR, DAIREE DeROSIA, B. JENKINS, ET AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ROBERT F. RIGGINS PRO SE
Rt 6 BOX 452-B
NEW BRAUNFELS,TX. 78130

28pp

1. Whether the Internal Revenue Service has been given the Judicial power to impose fines, penalties, interest and seize a citizens property without the Due Process of Law, because the citizen has claimed a (FIFTH AMENDMENT RIGHT), under the UNITED STATES CONSTITUTION, of which this Court has already made prior decisions.

2. Why do drug pushers, murders, rapist and common theives have the protection of the FIFTH AMENDMENT and not TAXPAYERS?

PARTIES INVOLVED IN THE COURT OF APPEALS

ROBERT F. RIGGINS

PLAINTIFF/APPEALANT

V

INTERNAL REVENUE SERVICE,
THE COMMISSIONER OF THE
INTERNAL REVENUE SERVICE,
L.A. REED, THERON C. POLIVKA,
T. THROESCH, W.R. VIDMAR,
DAIREE DeROSIA, B. JENKINS,
ET AL.,

DEFENDANTS

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IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT F. RIGGINS

Petitioner

v

THE INTERNAL REVENUE SERVICE, THE COMMISSIONER OF THE INTERNAL REVENUE SERVICE, L.A. REED. THERON C. POLIVKA, T. THROESCH, W.R. VIDMAR, DAIREE DeROSIA, B. JENKINS, ET AL.,

DEFENDANTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Robert F. Riggins, hereby petitions for a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Fifth Circuit entered in this case.

OPINIONS BELOW

The Opinion and order of the Fifth Circuit of Appeals is annexed as Appendex A. The Opinion and Order of the United States District Court for the Western District of Texas is enclosed as Appendex B.

JURISDICTION

The Opinion of the Court of Appeals (Appendex A.) was issued on March 6, 1985 and this Petition was filed in a timely manner. The Jurisdiction of this Court is invoked pursuant to 28 USC 2680 (h) Paragraph 163 and 28 USC 1343.

CONSITIUTIONAL RIGHTS INVOLVED

Article III Section 2 of the United States Constitution.

United States Constitution Article III §2, provides in pertinent part:

§2 JURISDICTION

Section 2. The judicial power shall

extend to all cases, in law and equity, araising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under this authority;- to all cases affecting ambassadors, other public ministers and consuls;- to all cases of admirality and maritime jurisdiction;- to controversies to which the United States shall be a party;- between a state and a citizens of another state;- between citizens of the same state claiming lands under grants of different states; and between a state, or citizen therof, and foreign states, citizens or subjects.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable

cause, supported by Oath of affirmation, and particulary describing the place to be searched and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for Capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases araising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speddy

trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of counsel for his defense.

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishment inflicted.

AMENDMENT IX

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparge others retained by the people.

AMENDMENT X

The power not delagated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people.

28 USCA SECTION 1343

...Expressely grants jurisdiction to the Rederal District Court in Civil actions for violations of Civil Rights, that is for any wrongs specified therein, UNITED STATES AGNEW v CITY OF COMPTON, 239 F 2D 226.

28 USC 2680 (h)

The new law (paragraph 163), allows individuals to sue the Federal Government for injuries or damages caused by unauthorized acts or omissions of investigative or law enforcement officers of the United

States.

STATEMENT OF THE CASE

The litiagative in which the present Petition is made concerns as its core, the Grievence of Robert F. Riggins over the Exclusion by the Internal Revenue Service, Et Al., of his Civil and Constitutionally Guaranteed rights, as a United States Citizen.

The Petitioner commenced this action in July 24, 1984, filing the original complaint in the United States District Court for the Western District of Texas, against the Internal Revenue Service, Et Al.. The Complaint sought Compensatory damages in the amount of 50,000 FRN,s from each defendant and Punative damages in the amount of 50,000 FRN,s from each defendant, for violating his Civil and Constitutional Rights, by denying the Petitioner the protection of the FIFTH AMENDMENT, that is found in the Handbook for special Agents, (Internal Revenue

Service) page 9781, Section 342.15 (1/18 /80 which reads in part, (1) The privilege against self-incrimination must be specifically claimed, or it will be considered to have been waived. LISANSKY v UNITED STATES (3.)...however, waiver of Constitutional rights will not lightly be inferred, and no special language is required in asserting them. GEORGE SMITH v UNITED STATES; EMSPAK v UNITED STATES; QUINN v UNITED STATES; In the language of the Quinn case: "It is agreed by all that a claim of privilege does not require any special combination of words. Plainly a witness need not have the skill of a lawyer to invoke the protection of the self-incriminating clause..as everyone agrees, no ritualistic formula is necessary in order to invoke the Privilege."
(2)...neither may Government use information illegally obtained as a wedge for prying incriminating evidence from the taxpayer, or, as a "lever to spring

consent." UNITED STATES v WATSON A. YOUNG

The Petitioner filed FIFTH AMENDMENT returns for the years 1981, 1982, and 1983 using the information above as well as 34 AM JUR 2 D Federal Taxation, paragraph 9388 and UNITED STATES v SULLIVAN, 274 US 259...the taxpayer may refuse to answer specific incriminating questions on the return, but he can't refuse to file the return.

Petitioner has brought suit, because he has been denied his guaranteed rights. This suit has been referred to as "Frivolous, and a Hodgepodge of unsupported assertions, Irrelevent Platitudes and Legalistic gibberish'.

REASON FOR GRANTING THE WRIT

More recently this Court has determined that an irreducible minimum, a litigant seeking to invoke the authority of a Federal Court, must show that (1) "he personally has suffered some actual or threatening injury as a result of the put-

actively illegal conduct of the defendants" (2) the injury "fairly can be traced to the challenged action", and (3) the injury is likely to be redressed by a favorable decision.

Petitioner has been fined, levied upon and had his portion of joint property sold without the Due Process of Law, or the protection of the United States Constitution.

THE OPINION OF THE COURT OF APPEALS DEFIES THOSE OF THIS COURT.

UNDER PRINCIPLES ESTABLISHED BY PRECEDENTS OF THIS COURT CONCERNING THE FIFTH AMENDMENT

The present Petition concerns the violations of the Internal Revenue Service, with respect concerning the protective rights of a citizen to rely upon the FIFTH AMENDMENT privilege to not incriminate himself. In, SMITH v UNITED STATES ..."Government may not prohibit or controll"

In 1976, this Court ruled 8 to 0 that a FIFTH AMENDMENT return was a legal return, GARNER v UNITED STATES, 424 US 648.

As a natural individual, Freeborn, and a sovereign of my Creator God, and as an individual living in the state, identified below and in the United States, I have studied and sought to learn the obligations and duties at law arising from my existence as an individual. I have relied upon various decisions of the SUPREME COURT of the United States, of the lower Courts, and the Courts of various States, as have been enumerated.

As a sovereign individual, I have no just power or right to seize and confiscate the property of another individual. Therefore, I cannot associate with other individuals of the people and grant such as abusive and tyrannical and unjust power to Government to seize and confiscate the property of others, even under

the banner of "taxes".

CONCLUSION

For the reasons stated, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted this 5th Day of April, 1985

ROBERT F. RIGGINS

PRO SE

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CERTIFICATE OF SERVICE

It is hereby certified that service of this Writ of Certiorari has been made on Defendants by mailing (3) copies of same as indicated below on this 5th day of April, 1985 in an envelope, with prepaid, and properly addressed as follows;

Michael L. Paup
Carlton D. Powell
Lisa A. Prager
Attorneys
Tax Division
Department of Justice
Washington, D.C. 20530

Solicitor General
Department of Justice
Washington, D.C. 20530

Robert F. Riggins
Petitioner Pro Se

Janurary 21, 1985

No. 84-2640

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Robert F. Riggins

Plaintiff/Appeallant

v

Internal Revenue Service,

Commissioner of the

Internal Revenue Service,

L.A. Reed, Therpn C. Polivka,

T. Throesch, W.R. Vidmar,

Dairee DeRosia, B. Jenkins,

Et Al.,

Defendants.

APPEAL FROM THE UNITED STATES

DISTRICT COURT FOR THE WESTERN DISTRICT

OF TEXAS

A-1

(cont)

BRIEF FROM APPEALLANT

Robert F. Riggins

Plaintiff/Appeallant

Pro Se

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 84-2640

Summary Calander

ROBERT F. RIGGINS,

Plaintiff/Appeallant,

versus

INTERNAL REVENUE SERVICE, COMMISSIONER of the INTERNAL REVENUE SERVICE, ET AL.,

Defendants/Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

(March 6, 1985)

Before REAVLEY, POLITZ and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

Robert F. Riggins appeals the district

court's dismissal of his complaint which sought declaratory relief and compensatory and punitive damages from the Internal Revenue Service, its Commissioner, and several of its employees including, L.A. Reed, Theron C. Polivka, T. Throesch, W.R. Vidmar, Dairee DeRosia, and B. Jenkins. The District Court dismissed the complaint for subject-matter jurisdiction, Fed R. Civ. 12(B) (1), and for failure to state a claim upon which relief can be granted, Fed R. Civ. P. 12(b) (6). The Commissioner's request for attorney's fees was denied. Finding this Appeal frivolous, we affirm, and award the Commissioner double cost plus damages.

In his complaint, Riggins alleged that the Appellees imposed an arbitrary fine, interest, and tax lien upon him because he claimed a Constitutional right under the Fifth Amendment. He sought declaratory

judgement that the acts, policies, and practices of the Internal Revenue Service violated his rights under the Constitution. Additionally, he requested compensatory damages of 50,000 FRN's[1] and punitive damages of 50,000 FRN's from each person in his complaint.

The district court clearly lacked subject-matter jurisdiction to issue a declaratory judgement. the Declaratory Judgement Act, 28 USC §2201 (1982), bars relief in Federal tax cases. Melton v Kurtz, 575 F 2d 547, 548 (5th Cir 1978).

The district court was also correct in holding that Riggins' complaint failed to state a claim upon which relief could be granted. The complaint "is a hodgepodge of unsupported assertions,irrelevent platitudes, and legalistic gibberish."

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[1]Riggins uses the acronym "FRN"s" for

the phrase "federal reserve notes".

CRAIN V COMMISSIONER, 737 F 2d 1417, 1418 (5th Cir 1984). This failure to state a claim also deprived the District Court of jurisdiction under 28 USC § 1343 (1982). See Carter v Telectron, Inc., 554 F 2d 1369 (5th Cir 1977), cert. denied, 439 US 1074, 99 S.CT. 847, 59 L.ED. 2d 41 (1979).

The Commissioner has requested sanctions against Riggins for bringing this frivolous appeal. These sanctions may include "just damages and single or double costs to the appellee". Fed R. App. P. 38.Damages consist of "reasonable attorney's fees (under which, as in private practice fees, attributable normal overhead (is) subsumed)." Knooblauch v Commissioner, 749 F. 2d 200, 202 (5th Cir 1984). Taxpayers have been warned of our intent to apply these sanctions, PARKER v COMMISSIONER,

724 F. 2d 469, 472 (5th Cir 1984), and we impose them against Riggins for bringing this frivolous appeal.

We award the Commissioner double costs plus reasonable attorneys' fees to be fixed by this court upon requisite record showing under locAL Rule 47.8.1 SEE KNOBLAUCH,749 F. 2d at 203.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

ROBERT F. RIGGINS

Plaintiff,

v CIVIL ACTION No. SA84CA1418

INTERNAL REVENUE SERVICE,

COMMISSIONER of the

INTERNAL REVENUE SERVICE,

L.A. REED, THERON C. POLIVKA,

T. THROESCH, W.R.VIDMAR,

DAIREE DeROSIA, B. JENKINS,

ET AL.,

Defendants

O R D E R

The matter before the court is defendants' Motion to Dismiss and Plaintiff's response thereto. After careful consideration, this court is of the opinion that it lacks subject-matter jurisdiction and further that Plaintiff has failed to

state a claim upon which relief can be granted. That being the case, it is necessary for the Court to deal with the deficiencies that also exist concerning jurisdiction over the defendants.

It is hereby ORDERED that the complaint be and is hereby DISMISSED with prejudice.

It is further ordered that defendants' request for an award of attorney's fee be denied.

SIGNED this 29th day of October, 1984

EDWARD C. PRADO
UNITED STATES DISTRICT JUDGE